

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ROSEMARY A. REID,

Plaintiff

v.

GRUNTAL & CO., INC., et al.,

Defendants

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Civil No. 90-0062 P

***RECOMMENDED DECISION ON DEFENDANT FIRST UNUM LIFE
INSURANCE COMPANY'S MOTION TO DISMISS OR FOR
PARTIAL SUMMARY JUDGMENT***

This motion to dismiss or for partial summary judgment¹ concerns the solitary legal issue whether the late payment provision of the Maine Insurance Code, 24-A M.R.S.A. ' 2436, is preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. ' 1001 *et seq.* In Count VIII of her complaint the plaintiff alleges that she is the beneficiary of a supplemental long-term disability policy issued by defendant First UNUM Life Insurance Company ("UNUM") and that UNUM breached ' 2436 when it failed to dispute her claim or advise her in writing that additional information was required within 30 days after receiving proof of loss. *See* Complaint §§ 14-16, 66-68. UNUM contends that the exclusive remedies provided by ERISA, *see* 29 U.S.C. ' 1132, govern this policy and that the plaintiff's state law claim is preempted pursuant to 29 U.S.C. ' 1144(a).²

¹ Because I conclude that the motion can properly be disposed of on the basis of the pleadings alone I recommend that the court treat it strictly as a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim.

² Consideration of this motion is predicated on this court having jurisdiction of the plaintiff's ERISA

There is no dispute that ERISA governs this policy. *See* Complaint && 60; Answer of Defendant UNUM & 31. In addition, the plaintiff concedes that the vast majority of courts to address this issue have decided that ERISA preempts state laws, such as the provision at issue here, which regulate the processing of insurance claims. *See* Plaintiff's Memorandum of Law in Opposition to Defendant UNUM's Motion to Dismiss or For Partial Summary Judgment at 1. Rather, the plaintiff argues that this court should adopt the reasoning of *Graves v. Blue Cross of California*, 688 F. Supp. 1405 (N.D. Cal. 1988), and hold that 24-A M.R.S.A. ' 2436 is a statute which regulates insurance and that it is exempt from preemption by ERISA's savings clause, 29 U.S.C. ' 1144(b)(2)(A).

claim. 28 U.S.C. ' 1331. It is unclear from the plaintiff's complaint, however, whether she meets the \$50,000 jurisdictional amount required for her other claims which are based on diversity of citizenship. *See* 28 U.S.C. ' 1332(a); Complaint & 4.

In *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), the Supreme Court summarized the mechanics of the ERISA preemption and savings clause provisions, 29 U.S.C. ' 1144(a) & (b)(2)(A):
 ``If a state law `relate[s] to . . . employee benefit plan[s],' it is pre-empted. The savings clause excepts from the pre-emption clause laws that `regulat[e] insurance." *Id.* at 45 (citations omitted). However, ``the express preemption provisions of ERISA are deliberately expansive, and designed to `establish pension plan regulation as exclusively a federal concern.'" *Id.* at 45-46 (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). The Court has given a broad common-sense meaning to the phrase *relate to*, ``such that a state law `relate[s] to' a benefit plan `in the normal sense of the phrase, if it has a connection with or reference to such a plan' [T]he pre-emption clause is not limited to `state laws specifically designed to affect employee benefit plans.'" *Id.* at 47-48 (citations omitted). 24-A M.R.S.A. ' 2436(1) states in relevant part:

A claim for payment of benefits under a policy of insurance against loss delivered or issued for delivery within this State is payable within 30 days after proof of loss is received by the insurer . . . and a claim

³ 29 U.S.C. ' 1144(a) & (b)(2)(A) state in relevant part:

(a) Supersedure; . . .

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title. . . .

(b) Construction and application

. . . .

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any state which regulates insurance

Id. at ' 1144(a) & (b)(2)(A).

which is neither disputed nor paid within 30 days is overdue, provided that if during the 30 days the insurer, in writing, notifies the insured that reasonable additional information is required, the undisputed claim shall not be overdue until 30 days following receipt by the insurer of the additional required information

Id. It is clear that ' 2436 is a state law which has a connection with the benefit plan at issue in this case and other such policies. I conclude, therefore, that ' 2436 relates to employee benefit plans.

The next issue is whether ' 2436 falls within the coverage of the savings clause because it ``regulates insurance.'" 29 U.S.C. ' 1144(b)(2)(A). The plaintiff argues that ' 2436 is a statute which regulates insurance because it satisfies the criteria articulated by the Court in *Pilot Life*, 481 U.S. at 48-49; *see also Graves*, 688 F. Supp. at 1409. In *Pilot Life*, the Court noted that in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), it ``[f]irst, . . . took what guidance was available from a 'common-sense view' of the language of the savings clause itself. *Pilot Life*, 481 U.S. at 48 (citation omitted). The Court stated that a common-sense understanding of the phrase ``regulates insurance' . . . lead[s] to the conclusion that in order to regulate insurance, a law . . . must be specifically directed toward that industry." *Id.* at 50. Without question ' 2436 meets the criterion of this test. Its provisions are specifically directed toward the insurance industry, concern the processing of insurance claims and are included within the Maine Insurance Code, 24-A M.R.S.A. ' 1 *et seq.* Accordingly, I conclude that, from a common-sense view, ' 2436 ``regulates insurance."

The plaintiff next argues that the same conclusion is compelled when what may be described as the Court's second test is applied. This test requires the court to look to the:

[t]hree criteria . . . used to determine whether a practice falls under the 'business of insurance' for purposes of the McCarran-Ferguson Act:

``[F]irst, whether the practice has the effect of transferring or spreading a policyholder's risk; *second*, whether the practice is an integral part of the policy relationship between the insurer and the

insured; and *third*, whether the practice is limited to entities within the insurance industry."

Pilot Life, 481 U.S. at 48-49 (quoting *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982) (emphasis in original)). The plaintiff does not argue that ' 2436 meets the first criterion because she acknowledges that in *Graves* the court found that `` claims settlement practices do not have the effect of transferring or spreading risk.'" See Plaintiff's Memorandum of Law in Opposition to Defendant UNUM's Motion to Dismiss Or For Partial Summary Judgment at 2 (quoting *Graves*, 688 F. Supp. at 1410). She notes, however, that no individual criterion is determinative in itself and argues that ' 2436 substantially satisfies this test because it fulfills its second and third requirements. See *Union Labor Life Ins. Co.*, 458 U.S. at 129. The second criterion is met because the timing and manner of claims processing is an integral part of the policy relationship. `` Indeed, nothing could be more fundamental to the interaction between policyholder and insurer than whether claims are paid promptly and in full." *Graves*, 688 F. Supp. at 1410. The third criterion of the test is met because `` the practices regulated by [' 2436] are `limited to entities within the insurance industry.' By its terms, the [Maine] statute pertains only to insurance practices." *Id.* at 1411. Thus, ' 2436 also substantially fulfills the requirements of the McCarran-Ferguson Act test. See *Graves*, 688 F. Supp. at 1411-12. Accordingly, I conclude that, from the ``business of insurance" view as well, ' 2436 is a state law which regulates insurance within the meaning of ERISA's savings clause.

This determination, however, is not the end of the inquiry. In order to decide that ' 2436 is exempt from ERISA's broad preemption provision the court must determine not only that the law in question regulates insurance, but also that the remedy which the statute provides is not one which Congress implicitly rejected when it enacted ERISA. See *Kanne v. Connecticut Gen. Life Ins. Co.*,

867 F.2d 489, 493-94 (9th Cir. 1988), *cert. denied*, 109 S. Ct. 3216 (1989); *In re Life Ins. Co. of North America*, 857 F.2d 1190, 1194 (8th Cir. 1988). In *Pilot Life* the Court said:

The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. ``The six carefully integrated civil enforcement provisions found in [' 1132(a)] of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly."

Pilot Life, 481 U.S. at 54 (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) (emphasis in original)). ERISA provides an exclusive remedy for a participant ``to recover benefits due to [her] under the terms of [her] plan [and] to enforce [her] rights under the terms of the plan." 29 U.S.C. ' 1132(a)(1)(B). Section 2436 establishes remedies for claimants whose claims are improperly processed and thus directly infringes upon the remedies explicitly provided in ERISA. In *Kanne* the Court Appeals for the Ninth Circuit, addressing a statute similar to ' 2436,⁴ stated that:

We do not find it possible to read [the language of *Pilot Life*] in a way that permits a state statute like [this one] to supplement the ERISA civil enforcement provisions available to remedy improper claims processing. Accordingly, the . . . state statutory cause of action for mishandling of [the] insurance claim is . . . preempted.

Kanne, 867 F.2d at 494. In addition, as the plaintiff concedes, the vast majority of courts to address this issue have held that ``the remedies afforded under ERISA are exclusive, and no state law

⁴ The parties agree that the statute at issue in *Kanne* and *Graves*, California Insurance Code ' 790.03(h), is similar to 24-A M.R.S.A. ' 2436. See Defendant First UNUM Life Insurance Company's Reply Memorandum to Plaintiff's Opposition to Defendant's Motion to Dismiss Or For Partial Summary Judgment at 3; Plaintiff's Memorandum of Law in Opposition to Defendant UNUM's Motion to Dismiss Or For Partial Summary Judgment at 1.

purporting to supply additional remedies will escape the preemptive effect of ' 1144(a)." *See In re Life Ins. Co. of North America*, 857 F.2d at 1194.

I agree with the majority position. The Supreme Court's decision in *Pilot Life* mandates the conclusion that ' 2436 embodies precisely the extra-statutory remedy which Congress intended to exclude when it enacted ERISA. Therefore, I conclude that ERISA preempts the remedies provided by ' 2436 and accordingly recommend that UNUM's motion to dismiss Count VIII of the plaintiffs complaint be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 8th day of June, 1990.

*David M. Cohen
United States Magistrate*